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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010 - 462**

13 **SUSAN DEE ENGEL, a.k.a. SUSAN DEE**
14 **MESSINEO, a.k.a. SUSAN DEE REEVES**
15 **4050 Third Avenue, No. 107**
San Diego, CA 92103

A C C U S A T I O N

16 **Registered Nurse License No. 430530**
17 **Nurse Anesthetist Certificate No. 2191**
18 **Public Health Nurse Certificate No. 44288**

Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Complainant Louise R. Bailey, M.Ed., RN, ("Complainant") brings this Accusation
23 solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing
24 ("Board"), Department of Consumer Affairs.

25 2. On or about August 31, 1988, the Board issued Registered Nurse License Number
26 430530 to Susan Dee Engel, also known as Susan Dee Messineo, also known as Susan Dee
27 Reeves ("Respondent"). Respondent's registered nurse license was in full force and effect at all
28 times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

3. On or about September 20, 1995, the Board issued Nurse Anesthetist Certificate Number 2191 to Respondent. Respondent's nurse anesthetist certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

4. On or about January 9, 1989, the Board issued Public Health Nurse Certificate Number 44288 to Respondent. Respondent's public health nurse certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

JURISDICTION

5. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

8. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing

1 with Section 11000) of the Health and Safety Code, or any dangerous drug or
2 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
3 in a manner dangerous or injurious to himself or herself, any other person, or the
4 public or to the extent that such use impairs his or her ability to conduct with safety to
5 the public the practice authorized by his or her license . . .

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14 9. Code section 2770.11 states:

15 (a) Each registered nurse who requests participation in a diversion
16 program shall agree to cooperate with the rehabilitation program designed by the
17 committee and approved by the program manager. Any failure to comply with the
18 provisions of a rehabilitation program may result in termination of the registered
19 nurse's participation in a program. The name and license number of a registered
20 nurse who is terminated for any reason, other than successful completion, shall be
21 reported to the board's enforcement program.

22 (b) If the program manager determines that a registered nurse, who is denied
23 admission into the program or terminated from the program, presents a threat to
24 the public or his or her own health and safety, the program manager shall report
25 the name and license number, along with a copy of all diversion records for that
26 registered nurse, to the board's enforcement program. The board may use any of
27 the records it receives under this subdivision in any disciplinary proceeding.

28 10. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer. Nothing in this section authorizes a certified
nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to
order his or her own stock of dangerous drugs and devices.

11. Code section 4324, subdivision (a), states:

Every person who signs the name of another, or of a fictitious person, or
falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
any prescription for any drugs is guilty of forgery and upon conviction thereof shall
be punished by imprisonment in the state prison, or by imprisonment in the county
jail for not more than one year.

12. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for her self.

1 13. Health and Safety Code section 11173 states, in pertinent part:

2 (a) No person shall obtain or attempt to obtain controlled substances, or
3 procure or attempt to procure the administration of or prescription for controlled
4 substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

5 14. Health and Safety Code section 11350 (a)(1) states, in pertinent part:

6 (a) Except as otherwise provided in this division, every person who
7 possesses (1) any controlled substance specified in subdivision (b) or (c), or
8 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15),
9 or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of
10 Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
11 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
12 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
13 licensed to practice in this state, shall be punished by imprisonment in the state prison . . .

(1) For a first offense under this section, a fine of at least one thousand
dollars (\$1,000) or community service. . .

13 COST RECOVERY

14 15. Code section 125.3 provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 CONTROLLED SUBSTANCE AT ISSUE

19 16. "Hydromorphone", is a Schedule II controlled substance as designated by Health and
20 Safety Code section 11055, subdivision (b)(1)(k), and a dangerous drug per Business &
21 Professions Code Section 4022. "Dilaudid" is a brand name for the generic drug Hydromorphone.

22 FIRST CAUSE FOR DISCIPLINE

23 (Diversion, Possession, Prescription, and 24 Self-Administration of Controlled Substances)

25 17. Respondent is subject to disciplinary action pursuant to Code section 2761,
26 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
27 subdivision (a), in that on or about December 7, 2008, while at Kindred Hospital, Respondent
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1 diverted drugs from secure narcotics cabinets. Respondent was hired by Kaplan College to teach
2 vocational nurses at Kindred Hospital only on Mondays and Tuesdays. Nurse instructors and
3 students are not employees of Kindred Hospital but are allowed under agreement to train nurses.
4 Most importantly, nurse instructors and students are not allowed access to narcotics cabinets.
5 However, on Sunday, December 7, 2008, when Respondent was not teaching, and without legal
6 authorization, Respondent used another nurse's security code to gain access into the hospital's
7 electronically locked narcotics cabinets, where she signed out and took Hydromorphone/Dilaudid,
8 that was not administered to any designated patients.

9 **Diversion of Controlled Substances:**

10 a. Respondent obtained the controlled substance, Dilaudid by fraud, deceit,
11 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
12 subdivision (a), when Respondent signed out four 8mg tablets of Dilaudid from the East Unit
13 Narcotics Cabinet under patient MR 16245's name, but the medication was never administered
14 according to the patients medical administration record (MAR). In addition, Respondent signed
15 out three more additional 8mg tablets of Dilaudid from the South Unit Narcotics Cabinet under a
16 different patient's name. On or about December 8, 2008, the Chief Clinical Officer for Kindred
17 Hospital interviewed Respondent, and Respondent admitted that she used other nurses' security
18 access codes to withdraw medications from several locked narcotics cabinets starting in August
19 2008. Respondent admitted to taking the Dilaudid for her own personal use. A later audit
20 conducted by the Chief Clinical Officer and the Pharmacist at the hospital concluded that
21 Respondent had withdrawn narcotic medications, primarily Dilaudid, on 134 occasions using the
22 access codes of various nurses without their consent or knowledge.

23 **Possession of Controlled Substances, Dilaudid:**

24 b. Respondent admitted to possession of Dilaudid without legal authorization and
25 without a valid prescription from a physician, dentist or other medical professional in violation of
26 Code section 4060.

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1 **Prescription of Controlled Substances, Dilaudid:**

2 c. Respondent illegally obtained prescribed controlled substances, Dilaudid, for herself,
3 as set forth above.

4 **Self-Furnishing of Controlled Substances:**

5 d. Respondent furnished Dilaudid to herself without lawful authority as set forth above.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use of Controlled Substances to an Extent or in a Manner**

8 **Dangerous or Injurious to Oneself and/or Others)**

9 18. Respondent is subject to disciplinary action pursuant to Code section 2761,
10 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
11 subdivision (b), in that while licensed as a registered nurse, Respondent used controlled
12 substances, including, but not limited to, Dilaudid, to an extent or in a manner dangerous or
13 injurious to herself and/or others as set forth above. Several months prior to the incident that
14 gave rise to this Accusation, Respondent "self-referred" to the Board's diversion program. While
15 Respondent was in the Board's diversion program, Respondent began diverting drugs from
16 Kindred Hospital as set forth above. Following the Board's investigation and Respondent's
17 admissions, she was terminated from the program.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 430530, issued to Susan
22 Dee Engel, also known as Susan Dee Messineo, also known as Susan Dee Reeves;

23 2. Revoking or suspending Nurse Anesthetist Certificate Number 2191,
24 issued to Susan Dee Engel, also known as Susan Dee Messineo, also known as Susan Dee
25 Reeves;

26 3. Revoking or suspending Public Health Certificate Number 44288, issued to Susan Dee
27 Engel, also known as Susan Dee Messineo, also known as Susan Dee Reeves;

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1 4. Ordering Susan Dee Engel, also known as Susan Dee Messineo, also known as Susan
2 Dee Reeves, to pay the Board of Registered Nursing the reasonable costs of the investigation and
3 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4 5. Taking such other and further action as deemed necessary and proper.

5
6 DATED: _____

3/23/10

Louise R. Bailey

Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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